

FA 04-4005664S

SUPERIOR COURT JUDICIAL

DISTRICT OF HARTFORD

MARK LOBATO

FAMILY SUPPORT MAGISTRATE

VS.

COURT

JUDITH MACDONALD

October 12, 2006

MEMORANDUM OF DECISION

Before the court is the state of Connecticut's motion to modify and increase a child support order, on behalf of the defendant (mother), for the support of one minor child, born March 26, 1996. The present child support orders are \$750 monthly for ten months, and \$375 monthly for the months of July and August.¹ The child support orders were entered in the state of Georgia and filed on November 16, 2004 in the Hartford Superior Court pursuant to General Statutes Sec. 46b-71 as a foreign judgment. Two court judgments were filed. The "Settlement Agreement" from the Superior Court of DeKalb County Georgia, September 4, 2001, upon the dissolution of marriage, was modified by the "Consent Final Order" dated August 16, 2004, in the Superior Court of Gwinnett County, Georgia.

The "Consent Final Order" was negotiated by the parties when the defendant moved with the child from Georgia to Connecticut in 2003. The plaintiff father has subsequently moved to Connecticut, within fifteen miles of the mother's residence, which triggered provisions in the 2004 modification for joint physical custody and equal parenting time. Accordingly,

¹The state of Connecticut has collected the money on a monthly basis, at \$687.50, not adhering to the orders of the Georgia Court.

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the child now spends alternate weeks with each of his parents and the summer is divided into equal parts.² (See "Consent Final Order" p. 10-11.)

Hearings were held on June 1, 2006 and July 20, 2006. Both parties cited as significant, an order from the 2001 Settlement Agreement" for the father to deposit \$250 a month in a Section 529 college savings plan. That order was specifically confirmed in the 2004 modification: "As additional child support...for the benefit of the child...." along with all insurance provisions.

I

The Family Support Magistrate Court has jurisdiction to hear motions to modify in IV-D cases, including orders entered by the Superior Court, for actions instituted pursuant to chapter 815j, which includes "Enforcement of Foreign Matrimonial Judgments" (Part II. Sec. 46b-70 to 46b-75) General Statutes Sec. 46b-231 (m) (4).) The court makes no finding as to its jurisdiction to consider a change in the orders for the \$250 monthly contribution to the child's education fund. The motion before the court is the state of Connecticut's form motion to modify child support. Any request to modify that provision would have to be pled specifically.

II

A. Applicable law. The initial determination for this court is whether to apply the law of Connecticut or Georgia. Pursuant to the Foreign Matrimonial Judgment Act Sec. 46b-70 et. seq, the judgment when filed becomes a judgment in the state of Connecticut, subject to the same procedures for modification as a judgment of a court of this state.³ While the Act provides

²The modification also reflected the parties' agreement regarding visitation, and transportation costs, because of the mother's move to Connecticut.

³Pursuant to part (b) "such foreign matrimonial judgment shall become a judgment of the court of the state where it is filed and shall be enforced and otherwise treated in the same manner as a judgment of a court in this state; provided such foreign matrimonial judgment does not contravene the public policy of the state of Connecticut. A foreign matrimonial judgment so filed shall have the same effect and may be enforced or satisfied in the same manner as any like judgment of a court of this state and is subject to the same procedures for modifying, altering, amending, vacating, setting aside, staying or suspending said judgment as a judgment of a court of this state; provided, in modifying, altering amending, setting aside, vacating, staying or suspending any such foreign matrimonial judgment in this state the

that the substantive law of the foreign jurisdiction is controlling (Section 46b-71 ,)⁴ there is emerging law from the Superior Courts that produces a contrary result in this matter. Those decisions recognize the application of the Uniform Interstate Family Support Act General Statutes [UIFSA] General Statutes Sec. 46b-212 et seq. in conjunction with the Foreign Matrimonial Judgment Act.

The court in *Moran v. Donaher*, Superior Court Judicial District of New Haven at New Haven, Docket No. FA 01-0457193S (31 Conn Law Rep. 181, 2002 Ct. Sup. 149) (Gruendel, J., January 4, 2002) applied the similar provisions of UIFSA, as adopted by Connecticut and New Jersey, to find that New Jersey, the "initiating state has continuing exclusive jurisdiction as long as that state remains the residence of the obligor." As the court, astutely observed, "the statutes permitting the registration of foreign judgments must be read 'to effectuate their general purpose to make uniform the laws of those states which enact them.'" (quoting General Statutes, Sec. 46b-75.) Connecticut would have had jurisdiction under the Foreign Divorce Act.

Similarly, the court in *Pugliese v. Pugliese*, Judicial District of Waterbury, docket No. FA 01-0169003S (37 Conn. Law Rep. 54,55, 2004 Ct. Sup. 8069,8070) (Cutsumpas,J., May 17, 2004) confirmed that UIFSA General Statutes Sec. 46b-212 applied when a foreign dissolution judgment was registered under Sec. 46b-71, citing *Moran*. The court found it significant that "Georgia has enacted a statute (O.C.G.A. Sec. 19-11-114 et.seq) that mirrors Section 205 of the Uniform Interstate Family Support Act and the Connecticut General Statutes Sec. 46b-212h." The court then found that UIFSA controlled and that Georgia retained continuing exclusive jurisdiction over the modification of

substantive law of the foreign jurisdiction shall be controlling."

⁴Our courts have held that "when modifying a foreign matrimonial judgment, the courts of this state must apply the substantive law of the foreign jurisdiction, and failure to do so constitutes plain error." *Mundus v. Mundus*, Superior Court Judicial District of Tolland at Rockville, Docket No. FA 99-0071258 (2005 Ct. Sup. 16873) (Solomon. J., December 28, 2005) (2005), quoting *Vitale v. Krieger*, 47 Conn. App. 146, 702 A.2d 148 (1997), quoting *Colby v. Colby*, 33 Conn. App. 417,421, 635 A. 2d 1241 (1994). Significantly, the dissolution judgment in *Mundus* was rendered by the trial court of New York and the agreement of the parties did not merge with the judgment. The decision is also distinguishable in that one of the parties still resided in the state of New York. The parties' agreement was entitled "Opt-Out" and the child support guidelines under New York law were not applied.

the child support orders because the obligor continued to reside in Georgia.

The Superior Court in *Fitzgerald v. Fitzgerald*, Judicial District of New London at Norwich , Docket No. FA 04-0129422 (2005 Ct. Supp. 2820) (Fischer, J., February 25, 2005), decided a jurisdictional issue in favor of the state of Massachusetts citing with approval *Pugliese* and *Moran*. The court rejected the argument that UIFSA, Sec. 46b-213q only applied to Family Support Magistrate cases, finding "it would make little sense and provide little uniformity if Massachusetts' child support orders could be modified in Connecticut in some cases but not in others" *Ibid*, p.2821.

After the initial hearing, this court issued preliminary findings citing the Foreign Matrimonial Judgment Act Sec. 46b-70 to 46b-75, and the provisions requiring the application of Georgia law. The court ordered an additional hearing because the evidence and arguments in the initial hearing related to the Connecticut Child Support guidelines. At that hearing the court reported the findings in the *Moran* and *Pugliese* decisions which would result in the application of Connecticut law. The parties did not object⁵ and further evidence was heard by the court. Accordingly the court finds that its conclusions in "Findings and Order for Hearing"⁶ dated July 11, 2006 are superceded by this decision. The court agrees with the cited Superior court decisions which have found that applying UIFSA Sec. 46b-212 et. seq. serves "the general purpose to make uniform the law of those states which enact them." General Statutes Sec. 46b-75. Both parties reside in Connecticut, as well as the minor child. No party has fled the jurisdiction and is trying to prevent the participation of another party. Neither is it a situation whereby a party is gaining an unfair advantage over another party by the

⁵ While the defendant did not object he specifically noted that he was not agreeing because he was not waiving his right to a jury trial which is provided under Georgia law and not available under Connecticut law in this matter.

⁶ This court found that "Pursuant to part (b) of 46b-71, the foreign matrimonial judgment has the force and effect of a Connecticut judgment and is "subject to the of a court of this states; provided, in modifying same procedures for modifying... said judgment as a judgment . . . such foreign matrimonial judgment in this state, the substantive law of the foreign jurisdiction shall be controlling."

application of one law or another

The court finds that the applicable provisions of the statutes in Georgia and Connecticut mirror each other. Pursuant to General Statutes Sec. 46b-212h (a)(1), and O.C.G.A. Sec. 19-11-114, a state retains continuing exclusive jurisdiction as long as the initiating state "remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued." The plaintiff, the defendant and the child all reside in Connecticut. Furthermore both states have adopted the child's home state rule in establishing the controlling order and jurisdiction, General Statutes Sec. 46b-212j. (b)(2) and (d), O.C.G.A. Sec. 19-11-116 (b)(2) and (d), which provide if two tribunals have child support orders, the order in the current home state of the child controls, and that tribunal would have continuing exclusive jurisdiction.

The court finds that Connecticut has continuing exclusive jurisdiction (General Statutes Sec. 46b-212j. (b)(2) and (d).) The Georgia order as registered in Connecticut is the controlling order (Section 46b-212j (b)(2)).⁷ Based upon the cited Superior Court rulings applying the Foreign Matrimonial Act in conjunction with the provisions of UIFSA and the court's review of the relevant provisions of UIFSA, adopted by Georgia and Connecticut, the court finds that Connecticut law applies to the substantive issues raised in the motion to modify. General Statutes, Sec. 46b-212o, O.C.G.A. Secs. 19-11-111 and 19-11-170.⁸

B. Child Support Guidelines. Based upon the evidence the court finds that the parties' incomes are as follows: plaintiff obligor's gross weekly income is \$3,230 and his net income is \$2,031; the defendant's gross weekly income is \$1,625 and her net income is \$1,165. The child support guideline amount for the plaintiff to pay the defendant is \$270, weekly. The present child support order is \$171.41 weekly for ten months and \$83.33

⁷ If the plaintiff obligor continued to live in Georgia, the defendant would have been required to move for a modification in Georgia.

⁸ Section 46b-212o provides that the tribunal "shall determine... the amount payable in accordance with the law and support guidelines of this state."

weekly for two months, presently collected at the rate of \$158.65 weekly or \$687.50 monthly.

The defendant requested the court to grant the motion and order the child support guideline amount. The plaintiff requested the court to deny the motion based upon a deviation pursuant to the shared physical custody and best interest of the child provisions of the Connecticut Child Support Guidelines sec. 46b-215a-3 (b) (6) (A) and (C.) In support the plaintiff cited the provisions of the "Settlement Agreement" which were approved in the later modification requiring him to pay \$250 monthly to a college fund. The plaintiff also claimed additional expenses for the child, which were included on his financial affidavit. The defendant mother testified that she was able to meet the child's needs under the present support orders, but further testified that she was careful with her spending, and they led a life style appropriate to their income. She argued that the plaintiff should pay the guidelines amount as required in Connecticut. The defendant also claimed that the plaintiff's increased expenses were largely discretionary due to his signing the child up for multiple costly outside activities such as music and sports. Because there is no court record of the parties' income at the time of the 2004 modification, the court inquired whether if their income had changed since that time. The parties agreed that both incomes had increased, but no evidence was provided as to the amount of increase. The "Consent Final Order" did not find the Georgia child support guideline amount.

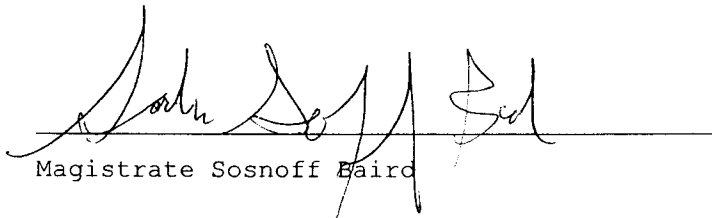
It is undisputed that the parties' parenting plan is "'shared physical custody'" within the definition of the Child Support Guidelines Regulations Sec. 46b-215a-1 (22). In deciding whether to deviate from the child support guidelines and what amount of deviation is reasonable, it is important to note that the Connecticut courts have found that "T]he purpose of a child support order is to provide for the care and well-being of minor children, and not to equalize the available income of divorced parents" *Battersby v. Battersby*, 218 Conn. 467, 473, 590 A.2d 427 (1991). The Child Support Guidelines Sec. 46b-215a-3 (b) (6) (A) provide criteria for the court in shared physical custody: "(I) such arrangement substantially reduces the custodial parent's, or substantially increases the noncustodial parent's

expenses for the child; and (ii) sufficient funds remain for the parent receiving support to meet the basic needs of the child after deviation."

The court finds that both parties reported an increase in income since 2004. The court finds credible the plaintiff's financial affidavit and his testimony that his expenses had increased because of the parenting time the child spends with him. A review of the defendant mother's financial affidavit shows no shortfall in meeting weekly expenses, under the present child support order. She also testified that the child's needs are met. The court finds it significant that when the 2004 child support order was entered the parties contemplated the child living full time with the mother in Connecticut and the father exercising his visitation rights from his home in Georgia. Pursuant to court orders the plaintiff paid for his own transportation costs for visitation and the defendant paid for the child's transportation. The parties now both reside in Connecticut, the child spends one half of his time with each parent.

C. Decision Consistent with the provisions of Section 46b-215a-3 (b) (6) (A) of the regulations the court finds based upon the evidence and testimony that the parties' custody arrangement is shared physical custody and the criteria have been met: that the arrangement substantially increases the plaintiff's expenses for the child; and that based upon the defendant's testimony and financial affidavit "sufficient funds remain for the parent receiving support to meet the basic needs of the child after deviation."

Therefore, by applying the above deviation criteria the court finds to order the guideline amount is inequitable and finds it fair and reasonable to deviate to the present order of \$158.65 weekly, or \$687.50 monthly. The court finds this amount to be equitable and therefore denies the motion to modify.



Magistrate Sosnoff Baird